

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

MISSISSIPPI STATE CONFERENCE OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE;  
DR. ANDREA WESLEY; DR. JOSEPH  
WESLEY; ROBERT EVANS; GARY  
FREDERICKS; PAMELA HAMNER,

*Plaintiffs,*

vs.

STATE BOARD OF ELECTION  
COMMISSIONERS; TATE REEVES *in his  
official capacity as Governor of Mississippi*;  
LYNN FITCH *in her official capacity as  
Attorney General of Mississippi*; MICHAEL  
WATSON *in his official capacity as Secretary  
of State of Mississippi*; DAN EUBANKS *in his  
official capacity as Ranking House Member of  
the Standing Joint Legislative Committee on  
Reapportionment and Redistricting*; DEAN  
KIRBY *in his official capacity as Vice  
Chairman of the Standing Joint Legislative  
Committee on Reapportionment and  
Redistricting*.

*Defendants.*

**CIVIL ACTION NO.  
3:22-cv-00734-DPJ-HSO-LHS**

**PLAINTIFFS' RESPONSE TO THE LEGISLATIVE DEFENDANTS'  
MOTION TO DISMISS AND UNOPPOSED REQUEST TO LIFT THE  
STAY OF DISCOVERY**

Plaintiffs Mississippi State Conference of the National Association for the Advancement of Colored People, *et al.* (“Plaintiffs”) respectfully request that the Court dismiss or deny the Legislative Defendants’ motion to dismiss as moot (Dkt. 17) and set aside the Court-ordered stay, which was issued pursuant to L.U.Civ.R. 16(b)(3)(B). (Feb. 14, 2023, ECF Text-Only Order Staying Discovery). In support of this request, Plaintiffs state the following:

1. On February 10, 2023, Defendants Dan Eubanks and Dean Kirby (the “Legislative Defendants”) filed a motion to dismiss Plaintiffs’ Complaint on jurisdictional and immunity grounds. Among other things, the Legislative Defendants in their motion stated that the “power to enforce the enacted 2022 Maps or any redrawn maps” is “vested in the [State Board of Election Commissioners] and its members,” rather than in the Legislative Defendants. Mem. in Supp. of Mot. to Dismiss (Dkt. 18) at 6-7 (citing, *inter alia*, *Thomas v. Bryant*, 366 F. Supp. 3d 786, 801-02 (S.D. Miss. 2019)).

2. On February 16, 2023, Plaintiffs voluntarily dismissed all the claims asserted against the Legislative Defendants without prejudice pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure. Dkt. 24. The State Board of Election Commissioners and its members remain as defendants in the case and have filed an answer to the Complaint. Dkt. 19.

3. Plaintiffs' Notice of Dismissal as to the Legislative Defendants is self-executing, moots all pending motions related to the dismissed parties, and is immediately effective upon filing. *See Int'l Driver Training Inc. v. J-BJRD Inc.*, 202 Fed. Appx. 714, 716 (5th Cir. 2006); *Harden v. Field Mem'l Cmty. Hosp.*, 516 F. Supp. 2d 600, 605 (S.D. Miss. 2007) (citing *Univ. of S. Alabama v. Am. Tobacco Co.*, 168 F.3d 405, 409 (11th Cir. 1999)).

4. Accordingly, because the Legislative Defendants are no longer parties to this litigation, the Legislative Defendants' pending motion to dismiss is moot and should be dismissed or denied.

5. Further, because the Legislative Defendants are no longer parties to this action and their pending motion to dismiss is moot, Plaintiffs request that the February 14, 2023 stay on discovery pursuant to L.U.Civ.R. 16(b)(3)(B) be lifted. The Rule provides, in relevant part, that "a motion asserting an immunity defense or jurisdictional defense stays the attorney conference and disclosure requirements and all discovery, pending the court's ruling on the motion." Because the motion asserting jurisdictional and immunity defenses that occasioned the stay is now moot and subject to dismissal or denial, the stay should be lifted so discovery may proceed.

6. Plaintiffs have conferred with the remaining Defendants in this case, who do not oppose Plaintiffs' request to lift the stay of discovery.

## CONCLUSION

The Legislative Defendants' motion should be dismissed or denied as moot and the stay issued in light of the motion should be lifted.

Dated: February 22, 2023

/s/ Joshua Tom

Joshua Tom, MSB 105392  
*jtom@aclu-ms.org*  
ACLU OF MISSISSIPPI  
101 South Congress Street  
Jackson, MS 39201  
(601) 354-3408

Robert B. McDuff, MSB 2532  
*rbm@mcdufflaw.com*  
MISSISSIPPI CENTER FOR JUSTICE  
767 North Congress Street  
Jackson, MS 39202  
(601) 969-0802

Carroll Rhodes, MSB 5314  
Law Offices of Carroll Rhodes  
*crhodes6@bellsouth.net*  
PO Box 588  
Hazlehurst, MS 39083  
(601) 894-1464

John P. Lavelle, Jr. \*  
MORGAN, LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
Telephone: +1.202.739.3000  
Facsimile: +1.202.739.3001  
*john.lavelle@morganlewis.com*

Respectfully submitted,

Ari J. Savitzky\*  
*asavitzky@aclu.org*  
Kelsey Miller\*  
*kmiller1@aclu.org*  
Ming Cheung\*  
*mcheung@aclu.org*  
ACLU FOUNDATION  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2500

Patricia Yan\*  
*pyan@aclu.org*  
ACLU FOUNDATION  
915 15th Street NW  
Washington, DC 20005  
(202) 457-0800

Ezra D. Rosenberg\*  
*erosenberg@lawyerscommittee.org*  
Jennifer Nwachukwu\*  
*jnwachukwu@lawyerscommittee.org*  
David Rollins-Boyd\*  
*drollins-boyd@lawyerscommittee.org*  
LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW  
1500 K Street NW Suite 900  
Washington, DC 20005  
(202) 662-8600

Drew C. Jordan\*  
MORGAN, LEWIS & BOCKIUS LLP  
1111 Pennsylvania Ave. NW  
Washington, DC 20004-2541  
Telephone: +1.713.890.5000  
Facsimile: +1.713.890.5001  
*drew.jordan@morganlewis.com*

James A. Nortey\*  
MORGAN, LEWIS & BOCKIUS LLP  
1000 Louisiana, Suite 4000  
Houston, Texas 77002  
Telephone: +1.713.890.5000  
Facsimile: +1.713.890.5001  
*james.nortey@morganlewis.com*

*\* admitted pro hac vice*

*Attorneys for Plaintiffs*

**CERTIFICATION OF SERVICE**

I, Joshua Tom, hereby certify that on February 22, 2023, a true and correct copy of the foregoing was electronically filed using the CM/ECF filing system, which automatically transmits email notifications to all counsel of record.

/s/ Joshua Tom  
Joshua Tom